*THE HONOURABLE MR JUSTICE D.S.R.VARMA

+W.P.No. 17283 of 1994

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% 15-07-2004

S# Vysya Bank Limited,

No.72, St.Marks Road,

Bangolore-560001.

Petitioner.

Vs.

$ 1. The Chairman, Industrial Tribunal-I, Hyderabad-01

2. M. Anjaiah rep. By the Vice-President,

All India Vysya Bank Employees Union, Hyderabad-01

Respondents.

! COUNSEL FOR THE PETITIONER:Mr.M.Panduranga Rao.

^ COUNSEL FOR THE RESPONDENTS No.1: None appared.

^ COUNSEL FOR THE RESPONDENTS No.2: G.P. for Social Welfare.

< Gist:

> Head Note:

? CITATIONS:

1. **AIR 1973 SC 1227**
2. **2001-I-LLJ**

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE FIFTEENTH DAY OF JULY
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE D.S.R.VARMA

WRIT PETITION NO : 17283 of 1994

Between:

Vysya Bank Limited,

No.72, St. Marks Road,

Bangalore-560001

..... PETITIONER

AND

1.The Chairman, Industrial Tribunal-I, Hyderabad-01
2.M. Anajaiah rep. by the Vice-President,
All India Vysya Bank Employees Union, Hyderabad-01

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ of Certiorari or other appropriate writ, order or direction calling for the records of the Industrial Tribunal-I, Hyderabad, in I.D.No.26 of 1990 and quash the impugned order, dated 16-6-1994.

Counsel for the Petitioner: MR.M.PANDURANGA RAO

Counsel for the Respondent No.1: None appeared.

Counsel for the Respondent No.2: GP FOR SOCIAL WELFARE

The Court made the following:

ORAL ORDER:

Heard both sides.

2**.** The award of the Industrial Tribunal in directing the Management-respondent to reinstate the workman without attendant

benefits and back wages is under challenge in this writ petition.

3. For the sake of convenience, the petitioner and the respondents 1 and 2 will be referred to as “the management, the tribunal and the workman” respectively. The management is a nationalized bank. The workman was a member of sub staff. The charge levelled against the workman is that he removed some amount on a particular day and was restored, however, on the same day, perhaps this charge amounts to temporary misappropriation, coupled with some element of theft. A charge sheet was issued and a regular domestic enquiry had been conducted and in the enquiry the workman was found guilty for various reasons.

4. On behalf of the management some witness were examined and the workman was also given an opportunity of being defended by a competent person of his choice. During the enquiry, a letter said to have been addressed by the workman was pressed into service. The contents and the effect of that letter was that the workman had admitted that he took away some amount on a particular day and the same had been again restored. Further, the workman had requested to condone his mistake and with a further promise that such kind of mistake would not be repeated in future.

5. Basing on the said letter and also on the other material, the enquiry officer arrived at a conclusion that the workman had committed irregularity of theft.

6. It is to be noted that, in fact, this act on the part of the workman could also be termed as temporary misappropriation because the amount was taken on a particular day in the morning and the same

had been restored in the evening, the reasons and method of which were not known. But, it may also amounts to theft because the workman was not the person who was dealing with the cash and he was only a member of the sub staff and he was nothing to do with the cash.

7. In such a case, perhaps the management was justified in making an allegation that the workman had committed theft. Notwithstanding the nature of the irregularity, as already pointed out, during the domestic enquiry, the evidence was adduced on behalf of both sides, the statement of the workman was also recorded and though the statement of the workman, which was recorded earlier, was also pressed into service, there was no effective rebuttal evidence on the part of the workman except denying the letter said to have addressed by him in his own hand writing.

8. A perusal of the report of the enquiry officer would only reveal that enquiry was conducted in proper lines giving full opportunity to the workman to defend himself.

9. After imposition of the punishment of dismissal, though a dispute had been raised before the tribunal, the workman did not challenge the validity of the domestic enquiry. In other words, he did never challenge the conduct of the domestic enquiry on the ground that the principles of natural justice were violated or on any other ground and on such ground the enquiry had to be held as vitiated.

10. When once the workman did not raise any objection as regards the validity or otherwise of the domestic enquiry, the law settled is that the tribunal cannot interfere with the findings arrived at by the enquiry

officer except in few cases like the finding of the enquiry officer was perverse, or, such a finding could not be arrived at on the basis of the record before the enquiry officer, or, the finding of the enquiry officer was malafide, or, out of victimization. It is further established law that when the domestic enquiry was held to be improper, a fresh opportunity would be rendered to the management to adduce fresh evidence before the tribunal in order to prove the guilt of the workman and the Tribunal can arrive at its own conclusion on the basis of the fresh enquiry conducted by it, and if need be, even if the workman was found to be guilty, the powers under Section 11-A of Industrial Disputes Act, 1947 (for short "the Act"), can be invoked and the punishment can be reduced. Such discretionary jurisdiction, however, again was held to be exercised judiciously. The first case decided by the Apex Court on this subject, particularly on the subject of exercising the jurisdiction of 11 (A) of the Industrial Disputes Act, 1947, was in ***WORKMEN OF FIRESTONE TYRE & RUBBER COMPANY OF INDIA (P) LIMITED v. MANAGEMENT & Ors.***

11. In the said judgment, the law laid down is as follows:

"The interference with the decision of the employer, will be justified only when the findings arrived at in the enquiry are perverse or the management is guilty of victimization, unfair labour practice or *mala fides."*

12. It was further held by the Apex Court as under:

"The Tribunal gets jurisdiction to consider the evidence placed before it for the first time in justification of the action taken, only if no enquiry has been held or after the enquiry conducted by an employer is found to be defective."

13. Either of these two contingences are present in this case. As already pointed out, the validity or otherwise of the domestic enquiry was never challenged by the workman and the scope and jurisdiction of the tribunal in such an event would be very narrow and only to the extent of recording a fining agreeing with the enquiry officer. Of course, if it is found that such findings were *mala fide* or in order to victimize the employee or the findings of the enquiry officer are perverse, of course, then, the tribunal can interfere with such findings of the enquiry officer and set aside the same.

14. In the instant case, it is already on record, as already noticed by this Court, that the workman himself admitted that he took the amount on a particular day and restored the same on the same day, through a letter, which was pressed into service by the management. I could not find any effective rebuttal evidence on this aspect. Subsequent or belated denial, particularly only during the time of domestic enquiry, is of no consequence. When denial of addressing such a letter is of no consequence, I do not find any *mala fides* or perversity in the findings of the enquiry officer.

15. On the contrary, the reasoning given by the tribunal in issuing a direction to the management to reinstate the workman with full back wages and other benefits, in my considered view, is totally perverse. In other words, the findings recorded by the tribunal are passed on mere conjectures and surmises.

16. A reading of the impugned award would further reveal that the tribunal did make an attempt to find fault with the other officers also by making certain observations against M.Ws.1 and 2. This itself is a manifestation that the tribunal was seriously concerned about the

inaction on the part of the management in not taking action against the other officers also, which further indicates that the workman was really involved in misdeed along with the others.

17. I do not propose to make any other observations on merits since the law laid down by the Apex Court in the case of ***WORKMEN OF FIRESTONE TYRE & RUBBER COMPANY OF INDIA (P) LIMITED v. MANAGEMENT & Ors*** (1 supra) had been followed by the Apex Court in a recent judgment reported in ***K.S.R.T.C. vs. B.S.HULLIKATTI.***

18. Further more, it is important note that it is the submission of the learned counsel appearing for the management that in view of the fact that the workman had meddled with the money of the bank, may be of less quantity, still such an action would lead the bank to loose faith on such workman. I agree with the said submission of the learned counsel appearing for the management in this regard.

19. It cannot be forgotten that the workman while dealing with the public monies in an institution, which deals with the public and public moneys, may be the quantum of money meddled with is minute, but it is a colossal loss of the banking institution inasmuch as it would loose the faith of the public, let alone the loss of faith of the management on the workman, the faith of the public on such institutions is paramount. Viewing from any angle, I cannot subscribe to the view taken by the tribunal.

20. For the foregoing reasons, the impugned award passed by the tribunal in I.D.NO.26 of 1990, dated 16-06-1994, is liable to be set aside and accordingly the same is set aside.

21. Accordingly, the writ petition is allowed. However, there shall be no order as to costs.

22. It is needless to mention that the workman may make a representation to the management and the same may be considered on compassionate and sympathetic grounds, if felt by the management as suitable.

23. Initially, this Court suspended the impugned award of the tribunal in W.P.M.P.No.21460 of 1994, dated 29-09-1994. Again while making the interim suspension absolute, this Court in W.P.M.P.No.21460 of 1994, W.V.M.P.No.2448 of 1996 and W.P.M.P.No.25106 of 1996, by order, dated 11-10-1996, directed the management to comply with Section 17-B of the Industrial Disputes Act, 1947.

24. Now, it is the complaint of Sri S.Satyam Reddy, the learned counsel appearing for the workman, that the said direction of this Court is not being complied with by the management.

25. That being the case, it is only a matter of verification, and the management shall verify as to whether the said direction of this Court, as regards the payment of last wages drawn were paid till date or not, if not paid, the amount shall be paid forthwith to the workman.

26. It is made clear that, this judgment shall not entitle the management to make any recovery of the amounts so paid in compliance of the order of this Court in W.P.M.P.No.21460 of 1994, W.V.M.P.No.2448 of 1996 and W.P.M.P.No.25106 of 1996, by order, dated 11-10-1996

(D.S.R.VARMA, J)

15TH JULY 2004

MRB/KRK

NOTE: L.R. Copy to be marked.

(BO)

Mrb/Krk.

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devider Gupta, the Chief Justice on this Thursday the Fifteenth day of July Two thousand and Four.

Sd/- K. VIVEKANAND,

ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER.

ONE FAIR COPY TO THE HON'BLE MR.JUSTICE D.S.R.VARMA.

(FOR HIS LORDSHIPS KIND PERUSAL).

To

1.The Chairman, Industrial Tribunal-I, Hyderabad-01

2.Two CCS to GP FOR SOCIAL WELFARE, High Court Buildings,

Hyderabad (OUT).

3.8 L.R. Copies

4.The Under Secretary, Union of India, Ministry of law,

Justice and Company Affairs, New Delhi.

5.The Secretary, A.P. Advocates Association Library,

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6..Two CD Copies.

7. One CC to Mr. M. Pandu Ranga Rao, Advocate.(OPUC)

8. One CC to S. Satyam Reddy, Advocate. (OPUC)

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